

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In re:

15-MC-40 (AKH)

AMERICAN REALTY CAPITAL
PROPERTIES, INC. LITIGATION

ETON PARK FUND, L.P. and
ETON PARK MASTER FUND, LTD.,

Civil Action No. 1:16-cv-09393-AKH

Plaintiffs,

v.

AMERICAN REALTY CAPITAL
PROPERTIES, INC. (n/k/a VEREIT, INC.),
ARC PROPERTIES OPERATING
PARTNERSHIP L.P. (n/k/a VEREIT
OPERATING PARTNERSHIP, L.P.), AR
CAPITAL LLC, NICHOLAS S.
SCHORSCH, DAVID S. KAY, BRIAN S.
BLOCK, LISA P. MCALISTER, LISA
BEESON, EDWARD M. WEIL, PETER M.
BUDKO, BRIAN D. JONES, WILLIAM M.
KAHANE, LESLIE D. MICHELSON,
WILLIAM G. STANLEY, EDWARD G.
RENDELL, SCOTT J. BOWMAN,
THOMAS A. ANDRUSKEVICH, and
SCOTT P. SEALY, SR.,

Oral Argument Requested

Defendants.

**NOTICE OF MOTION OF DEFENDANTS AR CAPITAL, LLC, NICHOLAS S.
SCHORSCH, EDWARD M. WEIL, PETER M. BUDKO,
AND WILLIAM M. KAHANE TO DISMISS THE COMPLAINT**

PLEASE TAKE NOTICE that Defendants AR Capital, LLC (“AR Capital”), Nicholas S. Schorsch, Edward M. Weil, Peter M. Budko, and William M. Kahane, upon the accompanying Memorandum of Law, will move, by and through their undersigned attorneys, before the Honorable Alvin K. Hellerstein, United States District Judge at the Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, Courtroom 12D, New York, New York 10007, on such date and time as the Court will determine, for an Order under Federal Rules of Civil Procedure 9(b) and 12(b)(6), dismissing Counts IV and V with prejudice as time-barred to the extent they assert claims arising from swap transactions and, independently, should dismiss Counts IV, V, and VI in their entirety for failure to satisfy Rule 9(b). Finally, the Court should dismiss Counts III and V against Messrs. Schorsch, Weil, Budko, and Kahane for the reasons stated in its August 5, 2016 Order.

Dated: February 10, 2017

Respectfully submitted,

/s/ Reid M. Figel
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